

## § 1007.35

the Housing and Community Development Act of 1992 must be on a form approved by both the DHHL and HUD.

(2) *Assumption or sale of leasehold.* The lease form must contain a provision requiring the DHHL's consent before any assumption of an existing lease, except where title to the leasehold interest is obtained by HUD through foreclosure of the guaranteed mortgage or a deed in lieu of foreclosure. A mortgagee other than HUD must obtain the DHHL's consent before obtaining title through a foreclosure sale. The DHHL's consent must be obtained on any subsequent transfer from the purchaser, including HUD, at foreclosure sale. The lease may not be terminated by the lessor without HUD's approval while the mortgage is guaranteed or held by HUD.

(3) *Liquidation.* The lender or HUD shall only pursue liquidation after offering to transfer the account to another eligible Native Hawaiian family or the DHHL. The lender or HUD shall not sell, transfer, or otherwise dispose of or alienate the property except to another eligible Native Hawaiian family or the DHHL.

(4) *Eviction procedures.* Before HUD will guarantee a loan secured by a Hawaiian Home Lands property, the DHHL must notify HUD that it has adopted and will enforce procedures for eviction of defaulted mortgagors where the guaranteed loan has been foreclosed.

(i) *Enforcement.* If HUD determines that the DHHL has failed to enforce adequately its eviction procedures, HUD will cease issuing guarantees for loans under this part except pursuant to existing commitments.

(ii) *Review.* If HUD ceases issuing guarantees for the DHHL's failure to enforce its eviction procedures, HUD shall notify the DHHL of such action and that the DHHL may, within 30 days after notification of HUD's action, file a written appeal with the Deputy Assistant Secretary, Office of Native American Programs (ONAP). Upon notification of an adverse decision by the Deputy Assistant Secretary, the DHHL has 30 additional days to file an appeal with the Assistant Secretary for Public and Indian Housing. The determination of the Assistant Secretary shall be

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final, but the DHHL may resubmit the issue to the Assistant Secretary for review at any subsequent time if new evidence or changed circumstances warrant reconsideration.

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### § 1007.35 Loan terms.

To be eligible for guarantee under this part, the loan shall:

(a) Be made for a term not exceeding 30 years;

(b) Bear interest (exclusive of the guarantee fee under §1007.55 and service charges, if any) at a rate agreed upon by the borrower and the lender and determined by HUD to be reasonable, but not to exceed the rate generally charged in the area (as determined by HUD) for home mortgage loans not guaranteed or insured by any agency or instrumentality of the Federal Government;

(c) Involve a principal obligation not exceeding:

(1) 97.75 percent of the appraised value of the property as of the date the loan is accepted for guarantee (or 98.75 percent if the value of the property is \$50,000 or less); or

(2) The amount approved by HUD under this section; and

(d) Involve a payment on account of the property:

(1) In cash or its equivalent; or

(2) Through the value of any improvements, appraised in accordance with generally accepted practices and procedures.

### § 1007.40 Environmental requirements.

Before HUD issues a commitment to guarantee any loan or (if no commitment is issued) before guarantee of any loan, there must be compliance with environmental review procedures to the extent applicable under part 50 of this title. If the loan involves proposed or new construction, HUD will require compliance with procedures similar to those required by §203.12(b)(2) of this title for FHA mortgage insurance.

### § 1007.45 Applicability of civil rights statutes.

To the extent that the requirements of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*) or of the

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Fair Housing Act (42 U.S.C.A. 3601 *et seq.*) apply to a guarantee provided under this part, nothing in the requirements concerning discrimination on the basis of race shall be construed to prevent the provision of the guarantee to an eligible entity on the basis that the entity serves Native Hawaiian families or is a Native Hawaiian family.

**§ 1007.50 Certificate of guarantee.**

(a) *Approval process*—(1) *In general.* Before HUD approves any loan for guarantee under this section, the lender shall submit the application for the loan to HUD for examination.

(2) *Approval.* If HUD approves the application submitted under paragraph (a)(1) of this section, HUD will issue a certificate as evidence of the loan guarantee approved.

(b) *Standard for approval.* HUD may approve a loan for guarantee under this part and issue a certificate under this section only if HUD determines that there is a reasonable prospect of repayment of the loan.

(c) *Effect*—(1) *As evidence.* A certificate of guarantee issued under this part by HUD shall be conclusive and incontestable evidence in the hands of the bearer of the eligibility of the loan for guarantee under this part and the amount of that guarantee.

(2) *Full faith and credit.* The full faith and credit of the United States is pledged to the payment of all amounts agreed to be paid by HUD as security for the obligations made by HUD under this section.

(d) *Fraud and misrepresentation.* This section may not be construed:

(1) To preclude HUD from establishing defenses against the original lender based on fraud or material misrepresentation; or

(2) To bar HUD from establishing regulations that are (on the date of issuance or disbursement, whichever is earlier) partial defenses to the amount payable on the guarantee.

**§ 1007.55 Guarantee fee.**

The lender shall pay to HUD, at the time of issuance of the guarantee, a fee for the guarantee of loans under this part, in an amount equal to 1 percent of the principal obligation of the loan.

This amount is payable by the borrower at closing.

**§ 1007.60 Liability under guarantee.**

The liability under a guarantee provided under this section shall decrease or increase on a pro rata basis according to any decrease or increase in the amount of the unpaid obligation under the provisions of the loan agreement involved.

**§ 1007.65 Transfer and assumption.**

Notwithstanding any other provision of law, any loan guaranteed under this section, including the security given for the loan, may be sold or assigned by the lender to any financial institution subject to examination and supervision by an agency of the Federal Government or of any State or the District of Columbia.

**§ 1007.70 Disqualification of lenders and civil money penalties.**

(a) *In general*—(1) *Grounds for action.* HUD may take action under paragraph (a)(2) of this section if HUD determines that any lender or holder of a guarantee certificate:

(i) Has failed:

(A) To maintain adequate accounting records;

(B) To service adequately loans guaranteed under this section; or

(C) To exercise proper credit or underwriting judgment; or

(ii) Has engaged in practices otherwise detrimental to the interest of a borrower or the United States.

(2) *Actions.* Upon a determination by HUD that any of the grounds for action in paragraph (a)(1)(i), of this section apply to the holder of a guarantee certificate, HUD may:

(i) Refuse, either temporarily or permanently, to guarantee any further loans made by such lender or holder;

(ii) Bar such lender or holder from acquiring additional loans guaranteed under this part; and

(iii) Require that such lender or holder assume not less than 10 percent of any loss on further loans made or held by the lender or holder that are guaranteed under this part.

(b) *Civil money penalties for intentional violations*—(1) *In general.* HUD may impose a civil monetary penalty on a